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Mary E. Golota Cantor Colburn LLP 201 W. Big Beaver Road Suite 1101 Troy, MI 48084			EXAMINER LIGHTFOOT, ELENA TSOY	
			ART UNIT 1792	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/511,080	<b>Applicant(s)</b> RUTHER ET AL.	
	<b>Examiner</b> Elena Tsoy Lightfoot	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-8,12,14-20,22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-8,12,14-20,22,24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Amendment***

Amendment filed on April 6, 2009 has been entered. Claims 9-11, 21 and 23 have been cancelled. Claims 1-3, 5-8, 12, 14-20, 22, 24, and 25 are pending in the application.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Rejection of claim 5 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been withdrawn due to amendment.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-8, 12, 14-20, 22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over and Mayer (US 5,633,037) and Applicants' admitted state of art (hereinafter AAA), further in view of Hartung et al (US 5,368,944), and further in view of Duda et al (US 6495201).

The Examiner Note: US 5,633,037 is of the same patent family as EP 0 521 040 B2 that is described in the Applicants' specification at P1.

Mayer discloses a process for producing a multicoat refinish system comprising applying an aqueous clear (pigment-free) aqueous coating material (See column 14, lines 48-49, 59-60) in the region of the defect in the OEM finish, applying aqueous or water-thinnable basecoat composition containing metallic pigment to the coated clear layer (See column 1, lines 12-20) in such a way that it hides the area of damage, i.e. **no shade difference** is noticeable between the coating and the substrate, and is applied to the adjacent area, presprayed with the aqueous coating material described above, by the tapering-off spray technique (See column 15, lines 1-8); and applying to the basecoat a transparent top coat composition (See column 1, lines 20-25); and simultaneously drying all three layers at temperature up to 140<sup>0</sup>C (See column 1, lines 5-31). Overlapping of the original finish, i.e. applying the basecoat beyond the region of the first clear coating, must be avoided in order to avoid marking the region of the edge zone by altered orientation of the metallic pigment (See column 15, lines 8-11).

The aqueous or water-thinnable coating materials used in the process (i.e. for each of three coating layers) contain at least one water-thinnable or water-dispersible binder, preferably in amounts from 5 to 50% by weight, particularly preferably in amounts from 10 to 30%, in each case based on the total weight of the coating material (See column 4, lines 36-41). These binders can be **polyurethane** resins (See column 4, lines 41-42) that can be modified by functional groups which are suitable for crosslinking of the resins using curing agents (See column 4, lines 43-46). In other words, the first clear coating material is a *pigment-free extract* of the aqueous refinish basecoat material. The aqueous coating materials may contain 5 to 20% by weight, based on the total solids content of the coating material, of a water-thinnable **amino resin, preferably melamine resin**, and 5 to 20% by weight of a water-thinnable polyether (for example

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polypropylene glycol having a number average molecular weight of 400 to 900) (See column 14, lines 11-16). A clearcoat material is then applied wet on wet to the aqueous basecoat film, after which the films present are cured together (See column 1, lines 21-31). The Examiner takes official notice that it is a common knowledge in the art that wet on wet technique involves flashing off each coat before applying a subsequent coat. The coating material is applied by e.g. a **spray gun** (See column 4, lines 15-16) in the region of the area of damage with a dry film thickness of **2 to 50**  $\mu$  (See column 3, lines 21-23) using the tapering-off technique (See column 4, lines 1-15). Mayer teaches that the repair of metallic paints is particularly difficult, since the shade and brightness of the special effect are highly dependent on the method of working; the width of the spray gun nozzle and the **spray pressure**, inter alia, play a crucial role (See column 1, lines 32-42) as well as the method of thinning and the spray viscosity likewise influence shade and special effect (See column 1, lines 42-43). The region of the adjacent original finish which is coated with the coating material using the tapering-off technique depends on many factors, for example the spray gun, the **spraying pressure**, the nature, size and position of the area of damage and similar (See column 4, lines 15-24). In the case of difficult colors, the edge zone can be resprayed using **lower spray pressure** using *low*-solid conventional special-effect paints (See column 2, lines 1-5) and water-thinnable base materials (See column 3, lines 52-62).

If it could be argued that as metallic basecoats are sprayed over the first clear coat at lower pressure than the first clear layer, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied a basecoat at less pressure than the first layer with the expectation of providing the desired tapered optimum coverage of original finish.

As to carrying out the processs on a line at an automakers's plant, Hartung et al teaches that refinishing can be effected shortly after the original finishing on the production line using a **fresh** coating of basecoat and clearcoat as well as after the automobile has been built (See column 5, lines 62-68).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have carried out refinishing in Mayer not after the automobile has been built but shortly after the original finishing on the production line using a **fresh** coating of basecoat and clearcoat since Hartung et al teaches that refinishing can be effected shortly after the original finishing on the production line using a fresh coating of basecoat and clearcoat as well as after the automobile has been built.

As to using original composition in refinish, Mayer discloses that a basecoat composition containing metallic pigment is applied to the coated clear layer (See column 1, lines 12-20) in such a way that **no shade difference** is noticeable between the coating and the OEM substrate (See column 14, line 47 to column 15, line 4). Hartung et al teaches that refinishing can be effected shortly after the original finishing on the production line using a **fresh** coating of basecoat and clearcoat. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have carried out refinishing in Mayer shortly after the original finishing on the production line using a fresh coating of the original basecoat and clearcoat since Hartung et al teaches that refinishing can be effected shortly after the original finishing on the production line using a fresh coating of basecoat and clearcoat, and Mayer discloses that a basecoat composition containing metallic pigment should be applied to the

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coated clear layer in such a way that no shade difference is noticeable between the coating and the OEM substrate.

As to electrostatic spray application, it is noted that “an OEM finish on a motor vehicle produced *by means of electrostatic spray application*” is product-by-process limitation. It is well settled that “Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Therefore, claimed OEM finish read on OEM finish of Mayer. Burden shifts to Applicants to show that OEM finish applied by means of electrostatic spray application should be different from that applied by e.g. pneumatic spray gun.

**Moreover, Applicants are willing to concede that electrostatic spraying of OEM finishes are per se known in the art (See page 16 of Remarks filed on 4/6/2009).** Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied OEM in Mayer electrostatic spraying since electrostatic spraying of OEM finishes are known in the art, and Mayer does not limit its teaching to particular technique of applying OEM.

As to using *pneumatic spray gun*, Mayer fails to teach that a spray gun is *pneumatic* spray gun.

Duda et al teaches that the application of water-based base coat compositions may be carried out with *conventional* application devices, i.e., with spray guns and corresponding nozzle

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and *air* cap equipment which may be conventionally used for vehicle *repair* coating such as normal *pneumatic* high performance spray guns (See column 3, lines 42-51) with output pressure in the case of conventional high-pressure guns, for example, **2.0 to 4.5 bar** (See column 4, lines 4-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used normal *pneumatic* high performance spray guns with output pressure within **2.0 to 4.5 bar** as spray guns in Mayer since Duda et al teaches that normal *pneumatic* high performance spray guns are *conventional* application devices conventionally used for vehicle *repair* coating for the application of water-based base coat compositions, and since Mayer does not limit its teaching to particular spray guns.

As to claim 3, Mayer teaches that the aqueous or water-thinnable coating materials contain at least one water-thinnable or water-dispersible binder, preferably in amounts from 5 to 50% by weight, particularly preferably in amounts from 10 to 30%, in each case based on the total weight of the coating material. These binders can be **polyurethane** resins (See column 4, lines 41-42) that can be modified by functional groups which are suitable for crosslinking of the resins using curing agents (See column 4, lines 43-46). In other words, the first clear coating material is a ***pigment-free extract*** of the aqueous refinish basecoat material. The aqueous coating materials may contain 5 to 20% by weight, based on the total solids content of the coating material, of a water-thinnable **amino resin**, preferably **melamine resin**, and 5 to 20% by weight of a water-thinnable polyether (for example polypropylene glycol having a number average molecular weight of 400 to 900) (See column 14, lines 11-16).



As to claims 5, 16, as was discussed above, Mayer teaches that spraying pressure is a result-effective parameter in a refinish process.

It is held that it is not inventive to discover the optimum or workable ranges of result-effective variables by routine experimentation. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). See also In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have determined the optimum values of the relevant spraying pressure parameters (including those of claimed invention) in Mayer through routine experimentation depending on particular application in the absence of showing of criticality.

As to claims 6-7, Mayer teaches that in addition to the variant of applying the coating material by the tapering-off spray technique it is also possible to apply this coating material to the area of damage and to the entire adjacent region of the original finish until a **boundary** is reached, for example an edge or a trim (See column 4, lines 25-30).

As to claim 8, Mayer teaches that the area of damage is prepared for the application of a refinish paint system by cleaning, sanding and, if necessary, applying a surfacer and/or body filler (See column 1, lines 5-8).

As to claim 15, The Examiner takes official notice that it is a common knowledge in the coating art to use low humidity or air flow to accelerate drying the applied coating.

As to claims 17-20, after drying of the basecoat at temperatures preferably at temperatures below 80.degree. C., for a period of 5 to 60 min., a suitable transparent topcoat composition is applied to the basecoat and--should the whole of the first coat not be provided with a basecoat--to the possibly still uncoated parts of the first coat. The topcoat composition is

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preferably applied so as to taper off into the uncoated region of the original finish or to the whole of the adjacent original finish up to an edge, decorative trim or similar in such a way that the original finish is hidden, since in this way time-consuming polishing work is eliminated. The dry film thickness of the topcoat is generally between 30 and 100  $\mu$ . **1- or 2-component** clearcoats, both organic solvent-borne and aqueous, are suitable as the topcoat composition. **Clearcoats based on a hydroxyl-containing acrylate copolymer and a blocked polyisocyanate** are frequently used. Such clearcoats are disclosed, for example, in the patent applications DE 3,412,534, DE 3,609,519, DE 3,731,652 and DE 3,823,005. After a **flash-off** time of about 5 minutes, if necessary, the topcoat, where appropriate together with the basecoat and where appropriate together with the coating obtained in stage (2) is dried at temperatures between room temperature and 140.degree. C., preferably at temperatures below 80.degree. C., for a period of 5 to 120 min the clear coat is flashed-off for about 5 minutes. See column 16, lines 40-67.

As to lower concentration in clear coat than in basecoat, Mayer teaches that the aqueous or water-thinnable coating materials used in the process (i.e. for **each** of three coating layers) contain at least one water-thinnable or water-dispersible film-forming material, preferably in amounts from **5 to 50%** by weight in each case based on the total weight of the coating material (See column 4, lines 36-41). Obviously, clear coat and basecoat may have the same or different concentrations because Mayer does not limit its teaching to particular concentrations of clear coats and basecoats. Mayer does not teach that clear coat has concentration lower than that of the basecoat. However, Mayer teaches that as described in Chapter 7 "Automotive Refinishing" of the Glasurit Handbook, in the case of metallic multicoat finishes after the preparative work described above, such as cleaning, sanding, surfacing, etc., the repair area and the adjacent parts

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are resprayed with a solvent-borne **highly thinned** clearcoat (See column 1, lines 49-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have determined the optimum values of the relevant concentration parameters of clear coats and basecoats (including those of claimed invention) in Mayer through routine experimentation in the absence of showing of criticality. Since it is known to use clear coat of lower concentration, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used clear coat having concentration lower than that of the basecoat depending on particular application since Mayer does not limit its teaching to particular concentrations of clear and basecoats.

Moreover, it is held that concentration limitations are obvious absent a showing of criticality. *Akzo v. E.I. du Pont de Nemours* 1 USPQ 2d 1704 (Fed. Cir. 1987).

5. Claims 1-3, 5-8, 12, 14-20, 22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer and AAA, further in view of Hartung et al, and further in view of Duda et al, as applied above, and further in view of Sakamoto et al (US 6,168,864).

As to electrostatic spray application, the cited prior art fails to teach that the OEM finish comprising aqueous basecoat and liquid clear coat is produced by an *electrostatic* spray application.

Sakamoto et al teaches that a multilayer automotive coating film comprising aqueous basecoat (See column 7, lines 1-5) and a liquid clear coat (See column 7, lines 13-14) may be produced by *electrostatically* spraying the liquid clear coat over spray coated the basecoat (See column 12, lines 13-21). The spray coating of the basecoat can be performed using an air spray

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coater, airless spray coater, air atomizing or rotary atomizing **electrostatic** coater (See column 8, lines 25-28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have produced a multilayer automotive coating in the cited prior art using electrostatic spraying since Sakamoto et al teaches that a multilayer automotive coating film comprising aqueous basecoat and a liquid clear coat may be produced by *electrostatically* spraying, and Mayer does not limit its teaching to particular techniques of applying OEM.

### ***Response to Arguments***

Applicant's arguments filed April 6, 2009 have been fully considered but they are not persuasive.

(A) Applicants argue that Mayer teaches refinishing after the automobile was built **and used**.

The Examiner respectfully disagrees with this argument. Mayer teaches refinishing after the automobile was built. Mayer teaches nowhere that refinishing is carried out after the automobile was used.

However, Hartung et al teaches that refinishing can be effected shortly after the original finishing on the production line as well as after the automobile has been built (See column 5, lines 62-68). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have carried out refinishing in Mayer shortly after the original finishing on the production line, as taught by Hartung et al.

(B) Applicants submit that Mayer is directed to post-OEM refinish, is that Mayer uses a tapering technique that is, in effect, now excluded by the present claims. This tapering technique is used to compensate for the fact that the refinish basecoat is, contrary to the present claims, different from the original basecoat. The tapering involves applying the refinish basecoat so that it "tapers off into the adjacent areas," so that "from the edge of the area of damage outwards the film thickness gradually diminishes to 0 gin." Col. 1, line 65, to col. 2, line 1. This

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technique is used to compensate for a change in shade, by gradually blending the refinish paint shade into the original paint shade. In contrast, the present claims now recite that, "the process is used for overcoating an entire area of the multicoat paint system or for overcoating a defect to the multicoat paint system and all of the adjacent area up to a boundary." Accordingly, no tapering would be used.

The Examiner respectfully disagrees with this argument. First of all, claims do not recite a negative limitation of *excluding* tapering technique. Second, claims recite overcoating a defect and all of the adjacent area **up** to a boundary, i.e. coating does not necessarily include boundary but may include area only the adjacent to the defect. Third, Mayer teaches coating up to boundary (See column 4, lines 25-30).

As to post-OEM, it is held that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Mayer is applied in combination with Hartung et al, that teaches that refinishing can be effected shortly after the original finishing on the production line as well as after the automobile has been built (See column 5, lines 62-68). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have carried out refinishing in Mayer shortly after the original finishing on the production line, as taught by Hartung et al.

(C) Applicants submit that Hartung merely defines refinishing of an original finish as occurring either on a production line or after the automobile has been built. The fact that refinish can occur in both settings, however, does not mean the refinish is necessarily the same. As noted by Hartung, for example, baking temperatures in the latter (OEM) case are generally up to 140°C, whereas in the second (post-OEM) case baking temperatures are more typically up to about 80°C. So Hartung cannot teach that the post-OEM refinish teachings of Mayer would predictably work in the very different context of OEM refinish.

The Examiner respectfully disagrees with this argument. Hartung teaches that: "The term refinishing is understood to mean the repair of original finishes using a **fresh** coating of basecoat and clearcoat and joint baking of the overcoated basecoat and clearcoat. Refinishing can be effected shortly after the original finishing on the production line as well as after the automobile has been built. In the first case the baking temperatures used are generally up to 140°C (high-bake refinishing), in the second case baking temperatures of up to about 80°C (lowbake refinishing) are generally used" (See column 5, lines 62-65). The phrase "a **fresh** coating of basecoat and clearcoat" can be interpreted only as a new coating of original basecoat and

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clearcoat because of the term “**fresh**”. Second, one of ordinary skill in the art would use original basecoat and clearcoat to refinish the defect in original finish **shortly** after the original finishing on the production line for the sake of matching color. Third, it is well known in the art that the same composition can be cured at different temperatures. Note that up to 140°C includes 80°C.

(D) Applicants submit that with respect to present independent claim 24, Hartung cannot in any way modify Mayer. Thus, the polyurethane and specified crosslinker used in the present extract is nowhere taught by Hartung.

The Examiner respectfully disagrees with this argument. Hartung et al is applied for teaching that refinishing can be effected shortly after the original finishing on the production line using a **fresh** coating of basecoat and clearcoat as well as after the automobile has been built (See column 5, lines 62-68). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have carried out refinishing in Mayer not after the automobile has been built but shortly after the original finishing on the production line using a fresh coating of basecoat and clearcoat since Hartung et al teaches that refinishing can be effected shortly after the original finishing on the production line using a fresh coating of basecoat and clearcoat as well as after the automobile has been built. Thus, it is irrelevant whether the polyurethane and specified crosslinker used in the present extract are taught by Hartung or not.

#### **Sakamoto et al**

Applicants are willing to concede that electrostatic spraying of OEM finishes are per se known in the art. However, this does not correct any of the above-noted deficiencies of Mayer or Mayer in view of Hartung and Duda. Sakamoto is apparently directed to a particular cationic electrodeposition coat formed from an epoxy-based cationic composition. Abstract. Sakamoto says nothing about refinishing; it mentions neither a refinishing process nor a refinishing composition.

The Examiner respectfully disagrees that directed to a particular cationic electrodeposition coat formed from an epoxy-based cationic composition. Sakamoto et al also teaches the use of electrostatic coater for applying coating composition other than epoxy coatings (See column 8, lines 25-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have produced a multilayer automotive coating in the cited prior

art using electrostatic spraying since Sakamoto et al teaches that a multilayer automotive coating film comprising aqueous basecoat and a liquid clear coat may be produced by *electrostatically* spraying, and Mayer does not limit its teaching to particular techniques of applying OEM.

Moreover, if Applicants are willing to concede that electrostatic spraying of OEM finishes are per se known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied OEM in Mayer by electrostatic spraying since electrostatic spraying of OEM finishes are known in the art, and Mayer does not limit its teaching to particular technique of applying OEM.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy Lightfoot whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Friday, 9:00AM - 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elena Tsoy Lightfoot, Ph.D.  
Primary Examiner  
Art Unit 1792

May 14, 2009

/Elena Tsoy Lightfoot/